

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Pimmit Branch
Falls Church, Virginia 22043
(Elaine J. Mittleman, Petitioner)

Docket No. A2011-90

**UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO MOTION
OF PETITIONER TO REOPEN PIMMIT BRANCH**
(November 23, 2011)

By means of Order No. 882 (September 29, 2011), the Postal Regulatory Commission (Commission) docketed correspondence from Elaine J. Mittleman (Petitioner), a customer of the Pimmit Branch in Falls Church, Virginia, assigning PRC Docket No. A2011-90 as an appeal pursuant to 39 U.S.C. § 404(d).¹ On September 27, 2011, Petitioner Mittleman filed a petition for review and application for suspension concerning the discontinuance of the Pimmit Branch.² On October 7, 2011, the United States Postal Service (Postal Service) filed a response to Petitioner's application for suspension.³ The Petitioner supplemented her application for suspension on November 9, 2011.⁴ On November 9, 2011, the Commission issued Order No. 958, denying the

¹ PRC Order No. 882, Notice and Order Accepting Appeal and Establishing Procedural Schedule, PRC Docket No. A2011-90, September 29, 2011.

² Petition for Review Received from Elaine J. Mittleman, PRC Docket No. A2011-90, September 27, 2011.

³ Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Pimmit Branch, Falls Church, Virginia 22043, PRC Docket No. A2011-90, October 7, 2011.

⁴ Petitioner's Supplement to Application for Suspension, Falls Church, Virginia, 22043, PRC Docket No. A2011-90, November 9, 2011. Attached to this filing was a copy of a letter dated October 11, 2011, from the Dranesville District Supervisor, County of Fairfax, Virginia, to Commission Chairman Ruth Goldway, which was filed separately in PRC Docket No. A2011-90 on November 8, 2011.

Petitioner's application for suspension.⁵ The Postal Service discontinued operations of the Pimmit Branch effective close of business on November 10, 2011.⁶ On November 17, 2011, the Petitioner filed a motion in this docket that the Pimmit Branch be reopened.⁷ As explained below, the Commission should deny this request.⁸

Petitioner's Motion to Reopen Pimmit Branch includes three arguments. First, the Petitioner argues that the Postal Service did not comply with 39 U.S.C. § 404(d) when it discontinued the Pimmit Branch, because the Postal Service did not make the Final Determination available to persons served by the Pimmit Branch prior to discontinuing the Pimmit Branch, and because the Postal Service did not provide customers with 60 days' notice of the discontinuance of the Pimmit Branch. Second, the Petitioner argues that the recently-announced "moratorium" on closings of Post Offices beginning on November 19, 2011, should apply to Pimmit Branch. Third, the Petitioner asserts that to the extent that the Postal Service's decision to close facilities is based on concern for the financial difficulties of the Postal Service, the closing of the Pimmit Branch before the holiday season will cause lost revenue for the Postal Service.

⁵ PRC Order No. 958, Order Denying Application for Suspension, PRC Docket No. A2011-90, November 9, 2011.

⁶ See United States Postal Service Notice and Application for Non-Public Treatment, PRC Docket No. A2011-90, October 12, 2011, Item No. 27, Customer Notification of Closure. In these comments, specific items in the administrative record, other than the Final Determination (FD), Item No. 25, at 4-9, are referred to as "Item ____."

⁷ Motion of Petitioner to Reopen Pimmit Branch, PRC Docket No. A2011-90, November 17, 2011 (hereinafter "Motion").

⁸ As an initial matter, the Postal Service reiterates that the appeal is not within the scope of the Commission's jurisdiction under 39 U.S.C. § 404(d). This appeal concerns a branch, and not a Post Office, for purposes of 39 U.S.C. § 404(d). In the Postal Service's view, Congress knowingly used "Post Office" in its technical sense thereby excluding stations and branches from the scope of 39 U.S.C. § 404(d). Accordingly, the Commission lacks jurisdiction to hear Petitioners' appeal.

In response to Petitioner's first argument that the Postal Service did not comply with 39 U.S.C. § 404(d) when it discontinued the Pimmit Branch, the Postal Service renews its arguments that the Commission lacks jurisdiction to hear Petitioner's appeal.⁹ Because section 404(d) does not apply and the Commission lacks jurisdiction to hear Petitioner's appeal, the Commission's Rules of Practice for Post Office closings set forth in 39 C.F.R. § 3001.110-117 do not apply in this instance. Even if the requirements in 39 C.F.R. § 3001.110-117 concerning Post Office appeals did apply, there is no remedy that grants the Commission authority to "reopen" a Post Office that has been discontinued. Rather, 39 U.S.C. § 404(d)(5) provides only that "[t]he Commission may suspend the effectiveness of the determination of the Postal Service until the final disposition of the appeal."¹⁰ Moreover, there is nothing in the Commission's rules in 39 C.F.R. that grants the sort of mandamus relief sought by Petitioner. Operations of the Pimmit Branch were discontinued effective close of business on November 10, 2011. Therefore, there is no remedy in Titles 39 of the U.S. Code or the Code of Federal Regulations for the type of equitable relief that the Petitioner seeks here.

Because, as discussed above, the Commission's Rules of Practice for Post Office closings set forth in 39 C.F.R. § 3001.110-117 do not apply in this instance, the requirements set forth in 39 C.F.R. § 3001.117 concerning the posting of documents related to a Post Office discontinuance appeal do not apply. Similarly, because the appeal procedures of 39 U.S.C. § 404(d) do not

⁹ Initial Comments of the United States Postal Service, section 1 (pp. 2-7), PRC Docket No. RM2011-13, October 3, 2011.

¹⁰ 39 U.S.C. § 404(d)(5).

apply, the regulations concerning the display of appeal documents set forth in 39 C.F.R. § 241.3(g)(3)(ii) are inapplicable here. Therefore, Petitioner's assertion that the Postal Service did not comply with 39 U.S.C. § 404(d) by not making the FD available to persons served by the Pimmit Branch is not germane here.¹¹

Furthermore, because section 404(d) does not apply and the Commission lacks jurisdiction to hear Petitioner's appeal, the requirement in 39 C.F.R. § 404(d)(1) that the Postal Service provide at least 60 days' notice of the Postal Service's intention to close or consolidate a Post Office is not applicable here. Even assuming the section 404(d) requirements were applied to the discontinuance of Pimmit Branch, the Postal Service satisfied the salient provisions of section 404(d)(5)(A) - (C). On January 7, 2010, the Postal Service distributed a letter to Post Office Box customers of the Pimmit Branch stating that discontinuance of the Pimmit Branch was under consideration. The letter included a questionnaire and invited comments on the potential change to the postal retail network.¹² The Postal Service also made the questionnaire available over the counter for retail customers at the Pimmit Branch.¹³ Through this notification, the Postal Service furnished customers with well over 60 days' notice of the Postal Service's intention to consider discontinuance of the facility.¹⁴

In response to Petitioner's second argument, recent policy pronouncements have no impact on the fact scenario presented here.

¹¹ See Answer of United States Postal Service in Opposition to Petitioner's Motion to Request the United States Postal Service to Supplement the Record, PRC Docket No. A2011-90, October 25, 2011, at 3.

¹² See FD, at 5; Item No. 10, Questionnaire Instruction Letter to Postmaster; Item No. 11, Cover Letter and Questionnaire, at 1.

¹³ FD, at 5; Item No. 10, Questionnaire Instruction Letter to Postmaster.

¹⁴ See Comments of United States Postal Service, PRC Docket No. A2011-90, November 21, 2011, at 3.

Petitioner's claim that a recently announced "moratorium" on post office closings supports her position is without merit. Petitioner presumably refers to the memorandum issued on November 8, 2011, by Dean Granholm, Vice President, Delivery & Post Office Operations (internal memorandum). That internal memorandum, however, provides that the actual physical closing of retail units will be temporarily suspended during the peak holiday season, from November 19, 2011 to January 2, 2012. The Pimmit Branch was closed on November 10, 2011, prior to November 19, 2011. Because the policy reflected in the internal memorandum began on November 19, 2011, the policy reflected in the internal memorandum affords no basis for overturning the decision here.

Concerning Petitioner's third argument that the closing of the Pimmit Branch before the holiday season will cause lost revenue for the Postal Service, the Petitioner does not mention or provide an estimate of the costs that would be incurred by the Postal Service were the Pimmit Branch to be reopened until January 2, 2012. Neither the Petitioner nor the Commission is charged with responsibility to decide how and in what manner facilities should be located in order to maximize revenue during the peak holiday season or other periods. *Cf.* 39 U.S.C. § 404(a)(3).

Finally, the relief requested by the Petitioner is not practicable to implement and would significantly disrupt postal operations. The list of numerous arrangements that the Postal Service has made to implement the final determination includes the following:

- Gave notice to the lessor of the termination of the lease, in accordance with the terms of the lease;
- Relocated affected employees at the Pimmit Branch, in accordance with applicable standards;
- Implemented operational changes with the discontinuance of the Pimmit Branch on November 10, 2011; and
- Made alternate arrangements for Post Office Box customers that previously received mail at the Pimmit Branch.

Thus, Postal Service operational plans for an efficient transition would be frustrated and costly if the Commission were to grant the requested relief.

For the reasons set forth above, the Postal Service urges the Commission to deny the Petitioner's Motion.

Respectfully submitted,

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